

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Connect America Fund

WC Docket No. 10-90

FCC 12-138

**COMMENTS OF
THE MASSACHUSETTS DEPARTMENT OF
TELECOMMUNICATIONS AND CABLE**

Commonwealth of Massachusetts
Department of Telecommunications and Cable

GEOFFREY G. WHY, COMMISSIONER

1000 Washington Street, Suite 820
Boston, MA 02118-6500
(617) 305-3580

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The Massachusetts Department of Telecommunications and Cable (MDTC)¹ respectfully submits these comments in response to the Further Notice of Proposed Rulemaking (FNPRM) released by the Federal Communications Commission (FCC) on November 19, 2012.² In the FNPRM, the FCC seeks comment on several proposed modifications to Connect America Fund (CAF) Phase I funding, as well as alternatives to the proposals.³ The FCC also asks whether the definition of “unserved areas” should include any census block lacking access to broadband with speeds of 4 Mbps downstream and 1 Mbps upstream.⁴

The MDTC encourages the FCC to consider a \$185 million CAF Phase I pilot program, as an alternative to the approaches set forth in the FNPRM. As discussed in detail below, repurposing the \$185 million in unsubscribed CAF Phase I 2012 incremental support into a reverse auction based pilot program is within the Commission’s authority, and has two clear

¹ The MDTC regulates telecommunications and cable services within the Commonwealth of Massachusetts and represents the Commonwealth before the FCC. MASS. GEN. LAWS ch. 25C, § 1; MASS. GEN. LAWS ch. 166A, § 16. Silence on any matter not addressed in these comments does not connote agreement or opposition by the MDTC.

² *Connect America Fund*, WC Docket No. 10-90 et al., Further Notice of Proposed Rulemaking, FCC 12-138 (rel. Nov. 19, 2012) (FNPRM).

³ *Id.* at ¶¶ 3, 9.

⁴ *Id.* at ¶ 11.

benefits. It allows for accelerated deployment of advanced, broadband capable networks; and provides the Commission with valuable information to evaluate and improve its CAF Phase II implementation, as discussed herein. Further, the MDTC encourages the FCC to adopt its proposal to define any area lacking 4 Mbps upstream/1 Mbps downstream broadband access as an unserved area.

I. THE FCC SHOULD CREATE A REVERSE AUCTION PILOT PROGRAM FROM THE UNCLAIMED \$185 MILLION OF CAF PHASE I.

The FCC seeks comment on proposals that would utilize the \$185 million remaining in unsubscribed CAF Phase I 2012 incremental support, but also seeks comment on alternatives.⁵ To meet the FCC's universal service goals for wireline broadband buildout more efficiently and rapidly, the FCC should adopt an alternative to its proposals and create a one-time CAF pilot program, funded by the remaining \$185 million. The pilot program funds should be distributed to wireline competitive carriers via a reverse auction methodology while implementation of Phase II is ongoing.⁶ This alternative approach has the dual benefit of putting the unsubscribed funds to work in a more immediate fashion, while providing the FCC with valuable information and insight for its longer term Phase II competitive bidding funding distribution model.

⁵ FNPRM, ¶¶ 3, 9. Options include: 1) combine the \$185 million from CAF Phase I 2012 into future CAF Phase I funding; 2) rollover the \$185 million into CAF Phase II; and 3) reduce the USF high-cost demand by \$185 million, thereby reducing the need for USF contributions. *Id.* at ¶¶ 2, 3, 44.

⁶See, e.g. *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45; WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (CAF/ICC Order), at ¶ 28 (discussing creation of Mobility Fund I and reverse auction process), ¶ 179 (discussing use of competitive bidding mechanism to distribute CAF Phase II support).

A. The FCC Should Accelerate Deployment In Price Cap Areas Using A Reverse Auction Pilot Program While Refining CAF Phase II.

As the FCC recognizes, distributing available funds to bring broadband capable networks to consumers and businesses as quickly and efficiently as possible is of significant importance.⁷ Gaps in broadband service persist in most states, including Massachusetts, and the MDTC shares the FCC's concern about timely deployment.⁸ In the FNPRM, the FCC seeks comment on changes to Phase I that "use the remaining \$185 million of incremental support... with maximum impact."⁹ Phase I was intended to be an interim measure until Phase II can be implemented.¹⁰ However, despite progress on Phase II implementation, it is reasonable to conclude that unserved areas in price cap territories where the incumbent has declined Phase I incremental support may not benefit from CAF Phase II funding until at least 2014.¹¹ Incumbent LECs declined more than half of the Phase I incremental support offered.¹² These incumbents may not reverse course and accept CAF funding in either 2013 or 2014 absent significant reforms relaxing the FCC's acceptance rules, particularly state-level commitment requirements. The MDTC does not believe relaxation of these rules is appropriate.¹³ In Massachusetts, where more than 99% of all households are within the service territory of a single incumbent LEC (who declined support),

⁷ FNPRM ¶ 7; see also *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; GN Docket No. 09-51; CC Docket Nos. 01-92, 96-45; WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (CAF/ICC Order), ¶ 145.

⁸ See, e.g., Attachment A (Map of eligible Census blocks in Massachusetts)

⁹ FNPRM at ¶ 9.

¹⁰ *Id.* at ¶ 42.

¹¹ The FCC originally contemplated commencing CAF Phase II on January 1, 2013. *CAF/ICC Order* at ¶ 148. However, as discussed below, the FCC has, despite its best efforts, fallen behind its initial schedule for commencing Phase II. see FNPRM fn. 6.

¹² See, e.g., Letter from Kathleen Grillo, Sr. Vice President of Federal Regulatory Affairs, Verizon, to Marlene Dortch, FCC, WC Docket No. 10-90 (July 24, 2012).

¹³ See MTDC Comments at 10-12; MTDC Reply Comments at 3-6.

additional delays in leveraging available funding to effectively begin closing service gaps are all but certain.¹⁴

The proposed pilot presents the FCC with the opportunity to test the reverse auction model contemplated by the CAF/ICC Order while it finalizes the Phase II cost model. Despite the efforts of the FCC to advance rapidly to Phase II, the cost model is not yet complete. Given that the CAF/ICC Order contemplated completion of this model by January 1, 2013 it is virtually certain that the start of Phase II will be delayed. Moreover, once started, Phase II itself will take significant, additional time to complete and therefore it will be some time before Massachusetts and other states will see any proceeds from the CAF support.

The proposed pilot program proposed here is consistent with the FCC's recent successful experience implementing a reverse auction to award one-time support in Mobility Phase I. In the Mobility Fund auction, the Commission used a reverse auction to award \$300 million in one-time support to winning bidders to deploy 3G or better service in areas lacking such service.¹⁵ The purpose of this support was "to immediately accelerate deployment of networks for mobile voice and broadband services in unserved areas," similar to the FCC's planned Phase II CAF auction.¹⁶ The success of the USF Mobility Phase I has demonstrated that reverse auctions can be effective tools for rapid deployment of advanced services and an efficient use of limited funds.¹⁷ The FCC should take advantage of the lessons learned from the auction process of Mobility Phase I and from other broadband pilot programs and apply this knowledge by creating a wireline reverse auction pilot program.

¹⁴ MDTC Report, "Competition Status Report," (rel. Feb. 12, 2010) at 10, available at <http://www.mass.gov/ocabr/docs/dtc/compreport/competitionreport-combined.pdf> (last viewed Jan. 15, 2013).

¹⁵ See *Mobility Fund Phase I Auction Closes, Winning Bidders Announced for Auction 901*, Public Notice, 27 FCC Rcd 12031m 12032 (2012), (Mobility Fund Phase I Auction) at ¶ 1.

¹⁶ CAF/ICC Order at ¶ 28.

¹⁷ Mobility Fund Phase I Auction at ¶1.

B. Competitive Carriers Could Use This Pilot Program To Support Existing Last Mile Projects In BTOP Project Areas.

The MDTC believes that one example of an efficient use of limited USF resources is supporting last mile broadband buildout to connect to existing federal and state projects already under construction using commitments under the Broadband Technology Opportunities Program (BTOP).¹⁸ Such an approach is consistent with the FCC's desire to build on existing BTOP investments and Congress's intent in creating the BTOP.¹⁹ Like many states, Massachusetts has persistent gaps in reliable, affordable broadband service, with many unserved or underserved areas located in the less densely populated western and central parts of the state.²⁰ By creating and funding the Massachusetts Broadband Institute (MBI) in 2009, Massachusetts prioritized broadband expansion and access as a part of its overall economic development strategy.²¹ In July 2010, the MBI received a \$45.4 million federal stimulus award as a part of BTOP Round 2 to construct the MassBroadband 123 network.²² MassBroadband 123 consists of a robust, middle mile project that will deploy approximately 1,100 miles of new fiber-optic cable to extend and expand broadband service to an area with over 300,000 homes and 44,000 businesses, as well as over 1,200 schools, community colleges, public safety institutions, hospitals and libraries.²³ This network will enable partnerships with last-mile providers who will close service gaps remaining in Massachusetts in hard-to-serve areas.²⁴

¹⁸ See <http://www.ntia.doc.gov/category/broadband-technology-opportunities-program> (last viewed Jan. 15, 2013) for program description and details.

¹⁹ CAF/ICC Order at ¶ 5.

²⁰ See <http://broadband.masstech.org/building-network/connecting-unconnected> (last viewed January 15, 2013)

²¹ See *An Act Establishing and Funding the Massachusetts Broadband Institute*, Chapter 231 of the Acts of 2008, available at: <http://www.malegislature.gov/Laws/SessionLaws/Acts/2008/Chapter231> (last viewed on January 10, 2013).

²² See <http://broadband.masstech.org/building-network/massbroadband123> (last viewed January 15, 2013)

²³ See <http://broadband.masstech.org/what-we-do> (last viewed January 10, 2013).

²⁴ See <http://broadband.masstech.org/building-network/last-mile-resources> (last viewed January 10, 2013).

While the BTOP grant provided a substantial incentive to deploy broadband in Massachusetts, additional CAF funding could prove instrumental in completing that deployment goal over last-mile facilities.²⁵ The FCC recently published the list of census blocks eligible for CAF support for each state.²⁶ The MDTC estimates that approximately 92% of the unserved populations in Massachusetts are in census blocks within a 3 mile radius of the *Massbroadband 123* network.²⁷ When the FCC initially determined not to adopt a competitive bidding process for the distribution of CAF support in the CAF/ICC Order, it offered incremental support in areas where “the incumbent LEC (is) likely to have the only wireline facilities . . . and few other bidders” may have the “financial and technical capability to deliver scalable broadband that will meet . . . requirements over time.”²⁸ In states such as Massachusetts, where the incumbent LEC has already declined such funding, gaps are perpetuated until the competitive process is opened up.

BTOP projects like MassBroadband 123 are designed specifically to bring middle mile networks to areas where stand-alone private capital has not flowed and to lower barriers to last-mile investment, thus creating opportunities for carriers, including smaller competitive carriers, to enter and serve unserved populations. The FCC’s adoption of a CAF Phase I reverse auction pilot could encourage such providers to step into the service gap and bring cost-effective regional solutions to bear, leveraging existing BTOP middle-mile assets and maximizing use of limited CAF funding.

²⁵ See <http://broadband.masstech.org/building-network/connecting-unconnected> (description of “middle mile” network)

²⁶ *Wireline Competition Bureau Seeks Comment on Areas Shown as Unserved on the National Broadband Map for Connect America Phase I Incremental Support*, WC Docket No. 10-90, Public Notice, DA 12-1961 (Rel. Dec. 5, 2012).

²⁷ See Attachment A, Map of Eligible Census Blocks in Massachusetts

²⁸ CAF/ICC Order and FNPRM at ¶ 175.

C. The FCC Has Acknowledged That Pilot Programs Can Provide Valuable Information.

As the FCC stated in its CAF/ICC Order, in areas where the incumbent LEC declines support, the FCC intends to use a competitive bidding mechanism to distribute support via a reverse auction in Phase II, open to any companies that have received appropriate ETC designations prior to the auction.²⁹ In addition to speeding deployment of advanced, broadband capable networks into unserved areas, the MTDC's proposal to repurpose the unclaimed CAF Phase I funds into a reverse auction pilot also provides the FCC with the opportunity to hold a *wireline* reverse auction and "see the application of these principles in practice and evaluate their effectiveness" in a different context.³⁰ This would not be the first time the FCC chose to reallocate previously earmarked universal service funds to a pilot program. Using newly available funds after realizing substantial savings from the Lifeline program, the FCC established a Lifeline broadband pilot program to develop data that can be used in evaluating how best to structure a similar, expanded program in the future.³¹ The MDTC supports this approach and encourages the FCC to adopt a similar approach, using the remaining 2012 CAF Phase I funds to establish a reverse auction-based pilot program.³²

II. THE COMMISSION SHOULD ADOPT THE 4/1 BROADBAND SPEED STANDARD FOR UNSERVED AREAS.

The MDTC supports the FCC's proposal to expand the definition of "unserved area" to include any census block lacking access to broadband with speeds of 4 Mbps downstream and 1

²⁹ CAF/ICC Order at ¶¶ 25, 179, 1189-1222.

³⁰ *Id.* at ¶ 120.

³¹ *In the Matter of Lifeline & Link Up Reform & Modernization, et al.*, WC Docket No. 11-42, et al., *Rep. & Order & Further Notice of Proposed Rulemaking*, FCC 12-11 (rel. Feb. 6, 2012) at ¶ 324; *see also In the Matter of Lifeline & Link Up Reform & Modernization*, WC Docket No. 11-42, Order, ¶ 1 (rel. Dec. 19, 2012).

³² The FCC has authority to utilize the unallocated remaining incremental support in the manner suggested by the MDTC; *see* CAF/ICC Order and FNPRM at ¶138 – "To the extent incremental support is declined, it may be used in other ways to advance our broadband objectives pursuant to our statutory authority."

Mbps upstream.³³ The FCC's National Broadband Plan established the country's broadband availability target at these speeds,³⁴ and the MDTC sees no compelling reason for the FCC to aim short of that target with the CAF. The FCC should use 4 Mbps downstream and 1 Mbps upstream as a floor and consider changes to the target as the CAF and the country's broadband infrastructure develop.³⁵ Maintaining static speed requirements, or adopting a standard lower than 4/1, would create only a temporary solution for CAF recipients, necessitating additional investment in the near future.

As the MDTC has noted previously, the FCC has repeatedly endorsed 4 Mbps downstream and 1 Mbps upstream as a standard for broadband service.³⁶ The FCC adopted these speeds as a minimum benchmark for CAF recipients and recently gave preference to Lifeline broadband pilot projects that offer at least these speeds.³⁷ The FCC should continue to view these speeds as essential, rather than backtracking. The CAF is designed to bring American consumers into the 21st century of communications; the Commission cannot fulfill its purposes by leaving behind consumers using 20th century broadband speeds.

III. CONCLUSION.

Repurposing the unsubscribed CAF Phase I 2012 incremental support into a reverse auction based pilot program is within the Commission's authority and has two clear benefits. It

³³ See FNPRM, ¶ 11.

³⁴ Connecting America: The National Broadband Plan, GN Docket No 09-51 at 135, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296935A1.pdf (Omnibus Broadband Initiative, Mar. 16, 2010).

³⁵ *Id.* ("Over time, these targets . . . will continue to rise."). The National Broadband Plan advised the FCC to reconsider the target every four years, making the next revision due sometime next year. *Id.*

³⁶ See, e.g., *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans In a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 11-121, MDTC Comments at 6-7 (filed Sept. 6, 2011); *In the Matter of Modernizing the FCC Form 477 Data Program, et al.*, WC Docket No. 11-10, et al., MDTC Comments at 3 (filed Mar. 30, 2011).

³⁷ CAF/ICC Order, ¶ 94; Lifeline Reform Order, ¶ 326.

allows for accelerated deployment of advanced, broadband capable networks, and provides the Commission with valuable information to evaluate and improve its CAF Phase II implementation, as discussed herein.

Respectfully submitted,

GEOFFREY G. WHY, COMMISSIONER

By: /s/ Benedict G. Dobbs

Paul Abbott, General Counsel
Karlen Reed, Competition Director
Benedict G. Dobbs, Deputy Director
Sean M. Carroll, Counsel

Massachusetts Department of
Telecommunications and Cable
1000 Washington Street, Suite 820
Boston, MA 02118-6500
Phone: 617-305-3580
Benedict.dobbs@state.ma.us

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Attachment A: Map of Eligible Census Blocks in Massachusetts

